



17 January 2014

## **EEB split views on the final BAT conclusions / BREF for CWW**

Dear CWW BREF review team, in particular Germán and Thomas,  
Dear Serge,

Based on the written input provided to the EIPPCB by email of 10 December 2013, indicating in the very same that unfortunately EEB could not attend in person to the final TWG meeting, and based on the meeting conclusions made available by the Bureau on 10 January 2014, I hereby regret that EEB confirms to submit the following **9 split views**.

The below (high number of split views) does however not judge on the quality and effort made by the Bureau staff to come to an ambitious and purpose oriented outcome. In fact the previous draft proposed by the Bureau indicated that you have tried in most areas covered by the below split views to bring improvements for environmental protection in line with the aim of the BREFs to serve as a driver towards improved environmental performance across the Union, and we wish to thank you for your efforts on this count.

### **Split View no 1: absence of BATAEL in relation to air emissions**

We support the split view and its rationale provided by other Member States (e.g. AT, DE, NL) on the absence of BATAEL in relation to air emissions.

#### Rationale:

We also conclude that BATAEL for air abatement techniques could have been established, on the basis of the data provided by TWG stakeholders (e.g. < 10 mg dust/Nm<sup>3</sup>) and common techniques employed in other BREFs. In fact we can conclude from recent BREFs standards that BAT for dust is to use bagfilters, which easily achieve a BATAEL for dust of <5mg/Nm<sup>3</sup> (daily based) with important multi-pollutant abatement co-benefits. In this regard we would wish to remind that according to the commission implementing decision 2012/119/EU laying down rules for the BREF reviews (herewith “BREF review rules”) evidence (i.e. solid technical and economic information) *“to support a technique as being BAT can come from one or more installations applying the technique somewhere in the world. In cases where the information on the technique comes from only one installation and/or only from installations located in third regions, a thorough assessment of the applicability within the sector will be carried out by the TWG.”*

It does NOT exclude that this evidence can be used from other installations (not specifically within the CWW sector) but from other installations applying these common air emissions abatement techniques.

We further see this gap as an undue competitive disadvantage for other industry sectors in the EU, at the cost of environmental and human health protection.

## **Split View no 2: cross reference to Green Chemistry and substitution missing in the EMS**

As requested in our previous email and based on the solid information provided by the TWG, we hereby submit a split view to BAT 1.1 (Environmental management systems) because the following sentence was not added after point vii **“applying the principles of Green Chemistry pursuant to section 3.6.2 and pro-active substitution of hazardous substances”**

Rationale: Another effective and integrated environmental protection technique is to substitute relevant hazardous substances in the production process / treatment phase. These may be required by chemical legislation (REACH, Pesticides / Biocides, product legislation like RoHS, Toys, Cosmetics etc) or follows implementation of the Green Chemistry principles developed in section 3.6.2., policy instruments and approaches the chemical industry is certainly familiar with.

It is important that these aspects are explicitly recognized as part of a proper EMS in the BREF.

This is also highly relevant for legal reasons. Not adding this sentence renders the previous chapters on substitution / green chemistry in section 3.6.2 as irrelevant to permitting.

## **Split View no 3: Monitoring requirements (BAT 3)**

*The split view relates on the basis that the following requests for reporting and monitoring have not been included.*

- a) ***“BAT is to monitor continuously any relevant substance listed in Annex X to Directive 2006/60/EC. Relevant means that the substance is likely to be used or found in the upstream process or treatment activities related to waste water, irrespective of thresholds”***
- b) ***“BAT is to monitor periodically the presence of any substance of very high concern identified on the REACH candidate list <http://echa.europa.eu/candidate-list-table>, and likely to be found in waste water, irrespective of thresholds. The operator of an installation using any of the above mentioned substance shall report annually on its website the exact amount of substances used and provide a justification that the substance is not emitted into the environment.”***

### Rationale:

EEB insists that all the relevant priority substances / priority substances according to the EQS Directive amended by Directive 2013/39/EU are monitored continuously irrespective of any threshold. “Relevant” means that this substance is likely / has the potential to be used on the site(s) in question and may end up in the waste water. It is clear according to Art 10 (1a) and (1b) / 18 of the IED / and provisions in the EQS Directive that monitoring has to be done on those pollutants. Further, annual reporting obligations apply according to E-PRTR on those 45 pollutants.

The REACH Regulation lays down provisions requesting special attention to any substance of very high concern (SVHC) listed to the official candidate list of REACH <http://echa.europa.eu/candidate-list-table> This includes notification provision in certain cases.

In order for the BREF to serve for improved environmental protection for the environment as a whole (as demanded by the BREF review rules) but also in order to support the delivery of

EU environmental acquis objectives under REACH (prioritization assessment under authorization procedure) / EQS Directive (watch list) it makes perfect sense, also in light of the polluter pays and prevention principle to request a periodic monitoring requirement, if that substance is used (irrespective of form) on the site upstream / in the treatment of waste water.

Further we see our demands as a consequence of implementation of the voluntary engagement of the EU chemical industry under the “Duty of Care “ Programme. An annual report of exact volumes used on the site is to be made available in a publicly available register. It is highly probable that the chemical industry produces / uses those SVHC.

#### **Split View no 4: removal of BAT 27 38 of the first draft 2 (emissions to water)**

EEB is against the removal of BAT 27-38 requiring common pre-treatment techniques to prevent pollution from tributary waste water streams.

**In relation to this split view would also object to the addition of the footnotes 16, 17, 18, 19 added to the BAT-AEL table on emissions to water for heavy metals.**

#### **Rationale:**

The EEB fully supports the position of the Austrian UBA on the decision not to have BATAEL pre-treatment on this count, highlighting significant gaps.

It is not clear to us on what basis BAT 27- 38 of the first draft 2 has been removed from the revised draft. It is the aim of the IED to prevent pollution at source, therefore clear requirements should be laid down on common pre treatment techniques to prevent pollution from tributary waste water streams, in particular where pollutants of concern have been identified. If pre-treatment is already covered in vertical BREF / to be covered in the vertical BREF then it does not harm that the CWW lays down a reminder on what should be done.

On the same basis we object to special treatment for tributary sources due to specific processes used or high input pollutant load. If there is high pollutant load for those hazardous pollutants (heavy metals) upstream, then further upstream pollution prevention/reduction should be taken in order to comply with the BATAEL range.

EEB would resist adding those footnotes, but instead inviting the operator concerned to submit an Art 15(4) IED derogation, which will be carefully assessed based on facts open to a transparent and inclusive public participation procedure.

We regard the “footnote approach” as a sidelining of the intended and applicable IED procedure foreseen under Art 15 (4) of the IED.

The final BAT conclusions are not purpose oriented on this count, EEB therefore would like the previous version to be retained.

#### **Split View no 5: removal of BAT 27 38 of the first draft 2 (emissions to water)**

EEB objects to the removal of BAT 57 “*BAT is to minimize the ecotoxic impact of waste water effluents by biomonitoring of the effluents and taking measures based on the biomonitoring results.*”

#### **Rationale:**

It is a common sense requirement. The applicability wording is already restrictive in relation to which cases this has to be taken with limited frequency, and it is necessary that the operator demonstrates that the toxicity potential is without concern when there is variation in

performance of WWT installation. We call on the Bureau to keep this BAT in the BAT conclusions section.

### **Split View no 6: removal of BAT 58 of the first draft 2 on the whole effluent assessment approach (emissions to water)**

EEB objects to the removal of BAT 58 *“BAT is to assess and to minimise the release of hazardous substances by discharge of waste water effluents containing chemicals which are persistent, liable to bioaccumulate and/or toxic by using the whole effluent assessment (WEA) technique.”*

#### **Rationale:**

The issue of cocktails effects is a well recognized scientific fact in chemicals policy and it is acknowledged that a “substance by substance” specific thresholds approach is inadequate for protecting the aquatic environment.

PBT are of specific concern to the environment and there is a 0 immission objective in surface water from man-made PBTs according to OSPAR Convention / Water Framework Directive for PBTs (Priority Hazardous Substances). The WEA is addressing identification of potential negative impact at source, and aims to identify needs for additional measures to be taken at source.

As the solid technico-economic information provided in earlier drafts suggests, it is a common technique for pharmaceutical sites / petrochemical sites already used. It is irrelevant for BAT determination on whether this technique is routinely used across the EU or not. We would hereby like to remind again that according to the BREF review rules:

*“evidence (i.e. solid technical and economic information) to support a technique as being BAT can come from one or more installations applying the technique somewhere in the world. In cases where the information on the technique comes from only one installation and/or only from installations located in third regions, a thorough assessment of the applicability within the sector will be carried out by the TWG.”*

### **Split View no 7: missing BATAEL for emissions to water and inconsistency with MAC values**

EEB provides a split view for the absence of BATAEL for all the relevant 45 pollutants in Annex X of the Water Framework Directive (WFD), as amended by Directive 2013/39/EU regarding Priority Substances (PS) and priority Hazardous Substances (PHS). According to the data submitted, relevant BATAEL for other pollutants missing relate to Nonylphenols and PAH.

This split view will be withdrawn if the following sentence (new text in blue) is added under the relevant BREF section (previous BAT 43 / Table 2 of D2 in section 4.9 / section 1.3.3 of the draft BAT conclusions):

*“The BAT-AELs refer to direct discharges to a receiving water body at the point where the emission leaves the installation while disregarding any dilution with other waste water streams after the final waste water treatment. The BAT-AELs apply if the emissions exceed the threshold values for the annual pollutant load.*

*The upper range of the BATAEL (annual average) of pollutants considered as priority substances or priority hazardous substances shall correspond to the maximum allowable concentration (MAC) values for the same unit as referred to in the relevant columns of the receiving water (columns 4, or 5, or 6) according to Annex II of Directive 2013/39/EU.*

*The upper range of the BATAEL of relevant MAC values for substances identified as priority hazardous substances shall provide for a linear decrease from the first review of the permit. They shall be set at “<detection limit” as from 2020 at the latest, and achieved through a combination of BAT 10, 11 and 12, or any other required measure.”*



#### Rationale:

For all of those substances, the permit needs to set an ELV according to Article 10 para 1(a), in particular for emissions to water as is the case for CWW installations. Art 18 of the IED requires the competent authority to safeguard the relevant EQS.

These substances are explicitly mentioned under Annex II point 13 of the IED (Annex X of the WFD). We would like to remind Member States that the “*ultimate aim of [the WFD] is to achieve the **elimination** of priority hazardous substances and contribute to achieving concentrations in the marine environment **near background values for naturally occurring substances**.*” The objective is to be achieved at the latest by 2020 according to OSPAR.

The CWW BAT conclusions do not live up to this objective, which is overriding technico-economic considerations.

#### **Split View no 8: BATael for emissions to water for Nickel and its compounds**

The EEB cannot accept that the BATAEL for Nickel is set at 5-50 µg/l but it should be amended to **<34 µg/l**.

A footnote shall be added stating “**provided that the annual average in the relevant surface water is <4 µg/l in any circumstances**”

#### Rationale:

Same remarks as under split view 6.

As specified in split view no 7, **Nickel and its compounds** is listed in the EQS Directive (number 23) with a MAC value of (unit µg/l)  $\leq 34$  for inland surface waters and other surface waters. The upper range of the BATAEL would therefore have to be aligned at the maximum to that value for the same reference unit.

#### **Split View no 9: removal of BATael for cd, pb and hg**

The EEB cannot accept the removal of BATAEL for major pollutants of concern such as cadmium, lead and mercury.

#### Rationale

Same remarks as under split view 6.

As specified in split view no 7, **Cadmium and its compounds** is listed in the EQS Directive (number 6) with a MAC value of (unit µg/l)  $\leq 0,45$  (Class 1) 0,45 (Class 2) 0,6 (Class 3) 0,9 (Class 4), 1,5 (Class 5) for inland surface waters and other surface waters. The upper range of the BATAEL would therefore have to be aligned at the maximum to that value for the same reference unit. This pollutant is identified as Priority Hazardous Substance (0 immission objective)

As specified in split view no 6, **lead and its compounds** is listed in the EQS Directive (number 20) with a MAC value of (unit µg/l)  $\leq 14$  for inland surface waters and other surface waters. The upper range of the BATAEL would therefore have to be aligned at the maximum to that value for the same reference unit.

As specified in split view no 6, **mercury and its compounds** is listed in the EQS Directive (number 21) with a MAC value of (unit µg/l)  $\leq 0,07$  for inland surface waters and other surface waters. The upper range of the BATAEL would therefore have to be aligned at the maximum to that value for the same reference unit. This pollutant is identified as Priority Hazardous Substance (0 immission objective).

Irrespective of the above, those pollutants are of very high concern to the aquatic environment since they are PBT / vPvBs substances, where even minimum concentrations will bring harm over time because those substances do accumulate in the environment.

The IED requires EQS objectives to be met, and a BREF cannot act in ignorance / contradiction to this obligation.

**General request in relation to split views reporting:**

As specified in the BREF review rules and for transparency reasons we want to be explicitly named in the document i.e. as “European Environmental Bureau [www.eeb.org](http://www.eeb.org) “

Thanks in advance for your consideration.

*Done in Paris 17/01/2014  
Christian Schaible*